

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
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BRIEF AND APPENDIX FOR APPELLEE

United States Court of Appeals

DISTRICT OF COLUMBIA

OCTOBER TERM, 1944

—
No. 8853

243

WILLIAM M. WILLIAMS, APPELLANT

v.

RAY L. HUFF, GENERAL SUPERINTENDENT, D. C. PENAL
INSTITUTIONS, APPELLEE

—
APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA
—

EDWARD M. CURRAN,
United States Attorney.

JOHN P. BURKE,
Assistant United States Attorney.

CHARLES B. MURRAY,
Assistant United States Attorney.

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(i)

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WILLIAM M. WILLIAMS, APPELLANT

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RAY L. HUFF, GENERAL SUPERINTENDENT, D. C. PENAL
INSTITUTIONS, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

This appeal is taken from a judgment of the court below entered after a finding of fact that the appellant intelligently waived his right to an attorney when in February 1939, he pleaded guilty in the District Court of the United States for the District of Columbia to an indictment charging him with assault with a dangerous weapon. A previous decision of the District Court to the effect that the minute entry reciting that the right to an attorney was waived closed the fact issue was reversed by this Court in *Williams v. Huff*, No. 8669, Court of Appeals, D. C., decided April 7, 1944. After that reversal the District Court held a hearing on the fact issue whether the right to counsel was intelligently waived and found as a matter of fact that it was. The present appeal is taken from the order denying release on habeas corpus, which order was based on the said finding of fact.

QUESTION INVOLVED

Appellee does not agree with the statement in appellant's brief that the question involved is whether appellant competently and intelligently waived his constitutional right to counsel. That issue was an issue of fact and has been decided against the appellant. The question presented by this appeal in the view of the appellee is whether the weight of the evidence before the lower court was such as to compel a finding in favor of the appellant so that its finding against him was, as a matter of law, erroneous.

ARGUMENT

The court below had before it the minute entry reciting that the appellant when he entered his plea of guilty waived his right to an attorney. While this Court ruled in the former appeal that that entry was not conclusive, it is certainly not an overstatement to say that it should be persuasive. As might be expected, it was not possible for the respondent to produce among the court attendants and officers present when the plea was entered in February 1939, anyone who could remember the circumstances of the waiver of counsel by the appellant. Accordingly the only witness who claimed to know the facts was the appellant, and he was therefore the only witness. While it is true that he is logically the person who would best remember just what happened, it is also true that he is logically the most biased witness. As the petitioner he had a burden to prove his allegations by a preponderance of the evidence (*Johnson v. Zerbst*, 304 U. S. 458, 468 (1938), *Walker v. Johnston*, 312 U. S. 275, 286); and he had also to overcome the presumption of regularity which the judgment of sentence carried with it (*Johnson v. Zerbst*, 304 U. S. 458, 468).

The brief for the appellant is devoted to the proposition that the right of an accused to counsel is a constitutional right, that the waiver of constitutional rights is not lightly to be assumed and that where it is denied prejudice is presumed. These observations are settled however for this case. This Court in the previous appeal went at least as far as the Supreme Court ever did in granting an imprisoned person opportunity

to prove a deprivation of a right which the court records solemnly recite he waived. The only question left is whether the court below with the evidence before it, including the court record, was compelled as a matter of law to hold that the appellant had sustained the burden of proof cast upon him. It is submitted that this court, in a case where the evaluation of evidence depended so largely upon an appraisal of the credibility of a witness who appeared before the court below and does not appear before this Court, cannot say that the court below was wrong.

CONCLUSION

It is respectfully submitted that the court below did not abuse its discretion in making the finding of fact which it did, and that its resulting judgment ought to be affirmed.

Respectfully submitted.

EDWARD M. CURRAN,
United States Attorney.

JOHN P. BURKE,
Assistant United States Attorney.

CHARLES B. MURRAY,
Assistant United States Attorney.

In the District Court of the United States for the District of
Columbia

Habeas Corpus No. 2502

WILLIAM M. WILLIAMS, PETITIONER

v.

RAY L. HUFF, GENERAL SUPERINTENDENT D. C. PENAL
INSTITUTIONS, RESPONDENT

Filed June 16, 1944. Charles E. Stewart, Clerk.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled case having been heard by the Court on May 12, 1944, upon consideration of the petition, the return and answer thereto and the evidence adduced, the Court makes the following findings of fact:

1. Petitioner, William M. Williams, was indicted in this District Court on June 3, 1941, for assault with a dangerous weapon, which assault was alleged to have occurred on August 24, 1939.

2. On June 6, 1941, defendant was arraigned and was advised of his right to the assistance of counsel. Petitioner declined to have an attorney appointed to represent him and pleaded guilty to the indictment. Petitioner at the time of entering his plea understood that he was entitled to have assistance of counsel if he so desired.

3. Petitioner was born on July 19, 1923, and went as far as grade 7B in school.

4. Petitioner understood the nature of the charge against him and understood the criminal nature of his act.

5. Petitioner had been informed that he was eligible for probation if he pleaded guilty and pleaded guilty in the hope of being placed on probation.

Wherefore Court makes the following conclusions of law:

1. Petitioner's waiver of the right to be represented by counsel was voluntary, informed, and intelligent.

APPENDIX

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2. Petitioner is not entitled to be discharged from service of the sentence imposed in criminal No. 67872.

F. DICKINSON LETTS,
Justice.

Seen 6/15/44.

J. H. BILBREY.

In the District Court of the United States for the District of
Columbia

Habeas Corpus No. 2502

WILLIAM M. WILLIAMS, PETITIONER

v.

RAY L. HUFF, GENERAL SUPERINTENDENT, D. C. PENAL
INSTITUTIONS, RESPONDENT

Filed June 16, 1944. Charles E. Stewart, Clerk.

ORDER

This cause having been heard by the Court on May 12, 1944, and the Court having made findings of fact and conclusions of law, it is by the Court this 16th day of June 1944—

Ordered that the petition be dismissed, the writ discharged, and the petitioner remanded to the custody of the respondent.

F. DICKINSON LETTS,
Justice.

Seen 6/15/44.

J. H. BILBREY.

In the District Court of the United States for the District of
Columbia

Habeas Corpus No. 2502

WILLIAM M. WILLIAMS, PETITIONER

v.

RAY L. HUFF, GENERAL SUPERINTENDENT, D. C. PENAL
INSTITUTIONS, RESPONDENT

Filed Oct. 6, 1944. Charles E. Stewart, Clerk.

STATEMENT OF EVIDENCE

Be it remembered that testimony in the above-entitled cause was taken before Honorable F. Dickinson Letts on May 12, 1944, following the opinion in the United States Court of Appeals entitled *William M. Williams, Appellant vs. Ray L. Huff, Appellee*; that the appellee was represented by John P. Burke, Esq., Assistant United States Attorney, and the appellant was represented by J. H. Bilbrey, Esq. Petitioner was the only witness and testified as follows:

That the petitioner was born July 19, 1923, and a birth certificate was offered and received in evidence in support thereof; that the father of petitioner is dead and that petitioner did not remember him; that his mother remarried on a date which he does not remember; that his mother and stepfather work during the day; that he went to the Shaw Junior High School where he reached the grade 7B; that he was not taught anything about the Constitution of the United States; that he read the Constitution for the first time after he was sentenced to Lorton, in the World Almanac; that he had never been in the District Court before June 1941, when he was brought up for arraignment; that in February 1939, he was sentenced to the National Training School for Boys; that he did not have counsel and never had had counsel until one was assigned to represent him in this case; that at the time of his plea of guilty, no one examined him as to his capacity to waive his right to counsel before plea; that he did not know he was entitled to counsel, assigned by the Court; that he had no recollection of being advised he was entitled to counsel before his plea (Minutes of District Court read into evidence showing assignment of counsel was offered to but refused by petitioner).

On cross-examination, the petitioner testified that he had escaped from custody and was arrested August 24, 1939, by Joseph P. Concannon, a parole officer of the National Training School for Boys; that at the time the officer apprehended him, petitioner was talking to his girl friend and the officer approached from the rear; that the girl warned him whereupon he turned and resisted the officer and attempted to escape from him; that he struck at the officer with his knife and he

later learned he had cut the officer on the thumb and finger; that the officer returned him to the National Training School; that at the time he tried to cut the officer he used a pen knife and did not then know that he had actually cut him; that in the District Jail he talked with other prisoners about the charge against him and they told him that if he pleaded guilty he had a good chance for probation; that he took their advice and pleaded guilty without counsel; that his purpose in pleading guilty was to gain probation.

The petitioner prays that the foregoing may be signed and sealed by the Court and made a part of the record in this case nunc pro tunc, which is accordingly done this 6th day of October 1944.

F. DICKINSON LETTS,
Justice. [SEAL]

Seen

J. H. BILBREY, 10/6/44.

JOHN P. BURKE, 10/6/44.